Brian E. Frosh
Attorney General

Media Contacts:
Press@oag.state.md.us
410-576-7009

PRESS RELEASE

Attorney General Frosh Joins Coalition Fighting for Recognition of Equal Rights Amendment as the 28th Amendment to the Constitution

Three-Fourths of States Have Now Ratified ERA, Making Way for New Constitutional Amendment

BALTIMORE, MD - Maryland Attorney General Brian E. Frosh has joined a coalition of 19 attorneys general and one governor in fighting to have the federal government recognize the Equal Rights Amendment (ERA) as the 28th Amendment to the U.S. Constitution. An amendment requires ratification of three-fourths of states, and earlier this year, a 38th state provided the final vote needed to ratify the ERA. However, on the advice of the Trump Administration's Department of Justice, the official in charge of certifying the ERA, as duly adopted, refused to do so, on the ground that a ratification deadline imposed by Congress had expired. The last three states to ratify the ERA — Nevada, Illinois, and Virginia — sued to compel the government to recognize the ERA, as duly adopted, arguing that the deadline was invalid, and the Justice Department then moved to dismiss their complaint. In an amicus brief filed in the U.S. District Court for the District of Columbia, the coalition argues that the plaintiff states' ratifications are valid, notwithstanding Congress purported deadline; that attempts by five states to rescind their earlier ratifications are ineffective; and, thus, that the ERA should be duly certified as an amendment to the U.S. Constitution.

"No one should suffer discrimination based upon sex." said Attorney General Frosh. "It is time for the Equal Rights Amendment to be enshrined as part of our Constitution."

The ERA states that "equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex" — explicitly guaranteeing protection against discrimination based on sex. Though an equal rights amendment was proposed as early as 1923, Congress did not propose the ERA to the states for ratification until 1972, when it did so with broad, bipartisan support. At the time, Congress purported to give the states a limited period of only seven years — until 1979 — to ratify the ERA. When just 35 states — three states short of the three-fourths of the states required — had ratified the ERA as the imposed deadline neared, Congress acted to extend the deadline for three more years, until 1982. No additional states voted to ratify the ERA in that amended period, however.

With the ratification votes of Nevada in 2017, Illinois in 2018, and Virginia earlier this year, the ERA was ratified by the requisite number of states. But under orders from the Trump

Administration, the archivist of the United States — who is responsible for certifying amendments, as duly adopted — denied the states' efforts to recognize the complete and final adoption of the ERA as the 28th Amendment to the U.S. Constitution based on the Justice Department's opinion that the deadline Congress imposed for state ratification is valid and expired decades ago.

Illinois, Nevada, and Virginia filed a lawsuit against the Trump Administration, and the administration moved to have that suit dismissed. Today's amicus brief — led by New York Attorney General Letitia James — supports the efforts of plaintiff states to deny that motion so that the case can proceed. The coalition argues that Congress lacks authority to diminish the states' ratification power by imposing a deadline in a joint resolution proposing an amendment, as it sought to do with the ERA. Congress's attempt to impose this type of external constraint on the states' right to ratify proposed amendments is not authorized by the text of Article V — which provides that amendments shall be valid "when ratified," without further qualification — and conflicts with the original understanding of Article V, as reflected in its structure and history. The framers and the original states that ratified the Constitution understood Article V to confer on the states a plenary power of ratification with which the federal government could not interfere, and, in fact, specifically rejected models that included time constraints.

The amicus brief also highlights that while five states have claimed to rescind their ratification votes, Article V gives states the right to ratify proposed amendments; it does *not* grant the right to rescind a ratification once submitted. In the few instances when states have attempted to rescind their ratifications of a proposed amendment, their attempted rescissions have been rejected as invalid. The 14th Amendment is a prominent example. The coalition concludes that allowing states to rescind their ratifications would also undermine the seriousness and importance that state legislators accord to their vote to ratify a proposed amendment, because a vote to ratify could always be undone at a more politically expedient time. The ratification process could thereby become what Justice Ruth Bader Ginsburg has called, "'a poker game' in which states would be encouraged to treat their ratification lightly because the issue could be taken up 'again and again and again.'"

In addition to Maryland, the brief was joined by the attorneys general of Connecticut, Colorado, Delaware, Hawaii, Maine, Massachusetts, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, Wisconsin, and the District of Columbia, in addition to the Governor of Kansas.